

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WESLEY BIRRELL, aka Bella-
Christina Birrell,

Plaintiff,

v.

MICHELLE DiTOMAS,

Defendant.

No. 2:22-cv-01834-KJM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by Eastern District of California local rules.

On February 20, 2024, the Magistrate Judge filed findings and recommendations, which were served on the parties and which contained notice that the parties may file objections within the time specified therein. Timely objections to the findings and recommendations have been filed. Although plaintiff objects to the findings and recommendations, she does not object to the Magistrate Judge's analysis of the relevant law as it applies to her pleadings. She requests instead that she be permitted to amend her complaint before the case is dismissed. *See* Objections at 3–4, ECF No. 31.

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304,
2 this court has conducted a *de novo* review of this case. Having reviewed the file, the court finds
3 the findings and recommendations to be supported by the record and by the proper analysis.
4 Although plaintiff objects to the findings and recommendations based on her request for leave to
5 amend, the Magistrate Judge recommends granting the motion with leave to amend.

6 Accordingly, IT IS HEREBY ORDERED as follows:

- 7 1. The findings and recommendations filed February 20, 2024, ECF No. 30,
8 are ADOPTED in full.
- 9 2. Defendant's request for judicial notice, ECF No. 19-2, is GRANTED.
- 10 3. Defendant's motion to dismiss, ECF No. 19, is GRANTED.
- 11 4. Plaintiff's complaint is DISMISSED with leave to amend.
- 12 5. Plaintiff shall file a first amended complaint within 30 days of the date
13 plaintiff receives service of a copy of this order.

14 DATED: April 29, 2024.

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17 CHIEF UNITED STATES DISTRICT JUDGE
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